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IN THE
COURT OF APPEALS OF INDIANA

DEBORAH M. WALTON,	)	
	)	
Appellant-Defendant/Counter-claimant,	)	
	)	
vs.	)	No. 29A04-0701-CV-44
	)	
CLAYBRIDGE HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Appellee-Plaintiff/Counter-claim Defendant.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes, Judge
Cause No. 29D03-0303-CT-200

October 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Deborah Walton appeals the trial court's judgment in favor of Claybridge Homeowners Association, Inc., ("the Association") on her counterclaims for libel and criminal trespass. We affirm.

Issues

Walton raises four issues, which we consolidate and restate as:

I. whether the trial court properly entered judgment against her on her counterclaim for libel; and

II. whether the trial court properly entered judgment against her on her counterclaim for criminal trespass.[1]

Facts

The relevant facts of this case were set out in one of Walton's prior appeals, Walton v. Claybridge Homeowners Association, Inc., No. 29A04-0207-CV-348, slip op. at 2-6 (Ind. Ct. App. July 15, 2003), trans. denied ("Walton I"):

> In the late 1970's and early 1980's, Brenwick Development Company, Inc. ("Brenwick") acquired a 238-acre tract of land in Clay Township, Carmel, Indiana, and planned a residential real estate development to be known as Springmill Streams. The Carmel City Plan Commission ("Plan Commission") approved the Springmill Streams primary plat, and on April 16, 1981, Brenwick recorded the Declaration of Covenants and Restrictions for Springmill Streams ("the Springmill DCR"). Brenwick's intention to develop the entire 238-acre tract of land was noted in the Springmill DCR, but at the time the Springmill DCR was recorded, only one section had been developed and subjected to its terms and conditions. As additional sections were

[1] Walton sought treble damages, costs, and attorney fees for the alleged criminal trespass based on the Victim's Relief Act. See Ind. Code § 34-24-3-1.

developed and plats for those sections were approved, they too were made subject to the Springmill DCR.

On October 5, 1987, the Hamilton County Commissioners approved the secondary plat for Section Six of Springmill Streams and it was recorded on November 5, 1987. The plat subjected Section Six to the Springmill DCR and provided that "[e]ach owner of a lot depicted on this plat shall take title to such lot subject to the terms and conditions of such declaration." Lot 107, commonly known as 12878 Mayfair Lane, was platted on the Section Six plat. The plat created an entryway easement, and planting and utility easements on Lot 107. Lot 106, which is located directly across Mayfair Lane from Lot 107, also contains entryway and planting easements. Both Lots 106 and 107 are located at the intersection of Brighton Avenue and Mayfair Lane. Brenwick intended Lots 106 and 107 to serve as the entryway lots for a subsequent, proposed Section Seven to the subdivision.

Section Seven, which abuts Section Six in several places, was developed shortly after Section Six. The secondary plat for Section Seven was approved by the Hamilton County Commissioners and recorded on December 5, 1989. Prior to approval of the Section Seven plat, Brenwick's request to vacate a utility easement on Lot 107 was approved. The utility easement was vacated so that Brenwick could combine Lot 107 with Parcel A, which was situated in Section Seven.

Because Brenwick decided that the lots in Section Seven would be more attractive and would command a higher price than those in the other sections of Springmill Streams, Brenwick changed its marketing strategy and decided to develop Section Seven under the name "Claybridge at Springmill." Brenwick also recorded a separate Declaration of Covenants and Restrictions for Claybridge at Springmill ("the Claybridge DCR"). Pursuant to the Claybridge DCR, Lots 106 and 107 were deemed to be subject to its terms and conditions. The Claybridge DCR also provides:

> In the event of any conflict between the terms and provisions of the Declaration of Covenants

> and Restrictions for Springmill Streams recorded in Deed Record 325, pages 590-610, as amended, and this Declaration, the terms of this Declaration shall prevail.

On April 19, 1991, the Springmill DCR was amended to include a provision which provided that the owners of Lots 106 and 107 would not have to obtain approval from the Springmill Streams planning committee for lot improvements, maintenance, or development. On that same date, the Claybridge DCR was amended to provide that Lots 106 and 107 were not subject to assessments for any of the maintenance obligations associated with certain Claybridge amenities including facilities, lakes, and entry signage.

In 1991, Brenwick constructed an entryway wall and wood fence on Lots 106 and 107, and landscaped the areas within the entryway and planting easements on those lots. In 1993, Brenwick conveyed Lot 107, including Parcel A, by general warranty deed to Conley and Delores Wines. The deed provided that the property was "subject to . . . all easements, encumbrances and restrictions of record; a certain Declaration of Covenants and Restrictions for Springmill Streams, . . . [and] a certain Declaration of Covenants and Restrictions for Claybridge at Springmill[.]" Walton purchased the property in 2000, and prior to that purchase she reviewed a surveyor location report of Lot 107, which noted the planting and entryway easements.

In October 2001, the Association hired surveyors to stake the right-of-way boundaries and planting and entryway easements on Lot 107 for the purpose of determining the area over which the Association had the right of access to continue to maintain the landscaping, fence and entryway wall situated in those easements. Walton observed the surveyors on her property and ordered them to leave. She also contacted the Sheriff's department and stated that she was "going to get violent" if they did not leave the property. As a result, the surveyors were unable to complete their work. Walton then informed the Association that she had hired a construction company to tear down the brick entryway wall that Brenwick built in 1991. She also sent a

letter to the landscaping company hired by the Association to maintain the landscaping within the easements and informed the company that they could not come onto her property without her consent.

On October 15, 2001, the Association filed a Complaint for Immediate Restraining Order or Preliminary Injunction, Permanent Injunction, and Damages in Hamilton Circuit Court, and the next day, the trial court entered an immediate restraining order against Walton. Hearings were held on December 13, 2001 and February 13, 2002. Due to the unavailability of a witness, the matter was continued to May 23, 2002.

On May 1, 2002, landscapers hired by the Association were working in the easements on Walton's property. Walton ordered them to leave the property and called the Sheriff's department. When the Sheriff's deputies arrived, Walton told them that the October 16, 2001 restraining order was invalid and that the landscapers were not allowed on the property. The landscapers left without completing their work and approximately one week later, Walton sent a letter to the landscaping company stating that Mary Lou Spellmeyer, the former president of the Association, was not authorized to hire them to landscape the entryway.

On May 23, 2002, a final hearing was held, and the trial court also heard evidence with regard to Walton's violation of the restraining order. As a result of her interference with the landscapers, Walton was held in contempt of court for violating the restraining order. The trial court then amended its order to authorize any law enforcement agency to use reasonable force to enforce its order. On June 28, 2002, the trial court entered its findings of fact and conclusions of law as well as a permanent injunction and restraining order against Walton. Specifically, the trial court found that[:]

> Walton has threatened the Association's property within the easements and has interfered with the Association's duties and responsibilities to maintain the easements. The Association and its members have been harmed

> and will suffer irreparable harm if a permanent injunction is not entered against Walton to restrain her from interfering with the rights and/or damaging the property of the Association. Walton's conduct is likely to continue if Walton is not permanently restrained. There is no other adequate remedy at law.
>
> The trial court also awarded costs and attorney fees to the Association.

(Citations omitted). Walton appealed the issuance of the permanent injunction and restraining order, and we affirmed, concluding that Walton had adequate notice that the Claybridge DCRs applied to Lot 107. Walton I, slip op. at 12. Walton then appealed the trial court's order requiring her to pay the Association's attorney fees. See Walton v. Claybridge Homeowners Ass'n, Inc., 825 N.E.2d 818 (Ind. Ct. App. 2005). We affirmed. Id. at 826.

Walton was also involved in litigation against her title insurance company regarding whether it was required to defend Walton in the Association's suit against her. The trial court granted summary judgment in favor of the insurance company, and we affirmed. See Walton v. First American Title Ins. Co., 844 N.E.2d 143, 149 (Ind. Ct. App. 2006), trans. denied.

As part of the Walton I litigation, Walton filed libel and criminal trespass counterclaims against the Association. A bench trial was held on these claims on February 2, 2006, after which the trial court entered judgment in favor of the Association. Walton now appeals.

Analysis

When a trial court enters findings of fact and conclusions thereon under Indiana Trial Rule 52(A), we may only reverse if the findings or conclusions are clearly erroneous. Butterfield v. Constantine, 864 N.E.2d 414, 417 (Ind. Ct. App. 2007). "The trial court's judgment is clearly erroneous only if its findings of fact do not support its conclusions or its conclusions do not support its judgment." Id. We review the trial court's legal conclusions de novo. Id.

I. Libel

Walton argues that the trial court "erred on the libel claim." Appellant's Br. p. 13. She focuses primarily on the trial court's conclusion that an error in the June 18, 2002 order was only "a technically erroneous . . . paraphrase" of testimony given at the hearing. App. p. 16. However, even if this conclusion is erroneous, Walton has not shown that the error affects her substantial rights with respect to the merits of the libel claim. See Ind. Appellate Rule 66(A) ("No error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.").

In making this determination, we assess the merits of Walton's libel claim. Walton's libel claim is based on a 2001 Association newsletter in which the Association informed the neighbors about its litigation with Walton. In the newsletter, the Association explained, "In the presence of a Hamilton County Sheriff Deputy, [Walton]

threatened to use violence to remove anyone from her property in the future." Exhibit 28. Walton claims this statement amounts to libel.

Under Indiana law, libel is a form of defamation. Branham v. Celadon Trucking Servs. Inc., 744 N.E.2d 514, 522 (Ind. Ct. App. 2001), trans. denied. "To maintain an action for defamation, a plaintiff must prove a communication with four elements: 1) defamatory imputation; 2) malice; 3) publication; and 4) damages[.]" Id. "However, not all defamation is actionable." Id. "True statements never give rise to liability for defamation." Id.

Here, the trial court properly concluded that the statement in the newsletter was substantially true. In a February 2002 hearing, Hamilton County Sheriff's Deputy Vicky Dunbar testified that during the incident with the surveyors in October 2001, Walton "advised that she had a gun and that if she had to she would use it to protect her property." Exhibit H p. 71. This portion of the February 2002 transcript was admitted into evidence at the trial on Walton's libel claim. During the 2006 trial, the trial court independently considered Deputy Dunbar's testimony and gave no "determinative weight" to the trial court's June 18, 2002 misstatement of Deputy Dunbar's testimony. App. p. 16.

Based on this evidence, the trial court concluded:

> Ultimately, then, Walton defamed herself, and she may not shift to Claybridge the responsibility for any injury to her reputation that might have resulted from her own conduct on or about October 1, 2001. The Court therefore concludes that Claybridge's defamatory statement in the newsletter supplement was substantially true, and that Walton therefore can not [sic] prevail on her claim for defamation in this case.

App. p. 72. Accordingly, because the contents of the newsletter were true, Walton's counterclaim for libel fails.[2]

II. Criminal Trespass[3]

Walton argues that the trial court should not have applied the law of the case doctrine to bar the relitigation of certain issues. The law of the case doctrine provides that an appellate court's determination of a legal issue binds both the trial court and the appellate court in any subsequent appeal involving the same case and substantially the same facts. Pinnacle Media, L.L.C. v. Metropolitan Dev. Comm'n of Marion County, 868 N.E.2d 894, 901 (Ind. Ct. App. 2007). "The purpose of the doctrine is to minimize unnecessary relitigation of legal issues once they have been resolved by an appellate court." Id. Accordingly, under the law of the case doctrine, relitigation is barred for all issues decided directly or implicitly in a prior decision. Id. "However, where new facts are elicited upon remand that materially affect the questions at issue, the court upon remand may apply the law to the new facts as subsequently found." Id.

The notice issue raised by Walton was addressed substantively by this court in Walton I. That decision was binding on the trial court and is binding on this court unless Walton elicited new facts that materially affected the notice issue at the trial on her

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[2] Regarding any alleged factual disputes, we do not apply the law of the case doctrine because it applies to the prior determination of legal issues. See Pinnacle Media, L.L.C. v. Metropolitan Dev. Comm'n of Marion County, 868 N.E.2d 894, 901 (Ind. Ct. App. 2007). Nevertheless, because this error does not affect Walton's substantial rights, it certainly does not amount to a manifest injustice for purposes of the doctrine of res judicata. Thus, any relitigation of the issue is barred.

[3] Any attempt by Walton to raise a due process claim in her reply brief is waived for failure to support it with cogent reasoning. See Ind. Appellate Rule 46(A)(8).

counterclaims. She did not do so.[4] Accordingly, relitigation of the notice issue is barred by the law of the case doctrine.

Walton also argues that the doctrine of res judicata requires us to revisit our conclusion in Walton I.[5] She refers to our supreme court's decision in State v. Huffman, 643 N.E.2d 899, 901 (Ind. 1994), in which it stated:

> With due respect for the doctrine of res judicata this Court has always maintained the option of reconsidering earlier cases in order to correct error. "A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work manifest injustice.'" Finality and fairness are both important goals. When faced with an apparent conflict between them, this Court unhesitatingly chooses the latter.

(Citations omitted).

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[4] In her reply brief, Walton points out that "additional exhibits were before the Superior Court in this case that demonstrated [she] was not on notice of the easements in question." Appellant's Reply Br. p. 1. Without more, however, we cannot agree that the admission of additional evidence, which was presumably available at the time of the first proceeding, in a subsequent action somehow bars the application of the law of the case doctrine or res judicata.

[5] The parties treat the doctrines of the law of the case and res judicata as one and the same. As explained by our supreme court, the two are different legal doctrines:

> The doctrine of the law of the case stands for the proposition that an appellate court's determination of a legal issue is binding in subsequent appeals given the same case and substantially the same facts and is "based upon the sound policy that when an issue is once litigated and decided, that should be the end of the matter." Unlike its kindred rule of res judicata, however, it is not a uniform rule of law, but rather "only a discretionary rule of practice."

State v. Lewis, 543 N.E.2d 1116, 1118 (Ind. 1989) (alteration in original) (citations omitted).

It has been said that the-law-of-the-case calls for discretion and res judicata supercedes discretion and compels judgment. Id. "'In other words, in one it is a question of power, in the other of submission.'" Id. (citation omitted). For the sake of argument, we assume Walton properly preserved and raised each claim, and we address them separately.

Walton urges that we wrongly concluded in Walton I that the Claybridge DCRs applied to Lot 107,and therefore she was subject to a manifest injustice. She asserts that we should revisit the notice issue. We disagree.

The basis for Walton's claim that she was subjected to manifest injustice by the trial court's reliance on its prior decision is a reference in the prior decision to her title insurance policy providing her with the knowledge of the applicability of the Claybridge DCRs to Lot 107. Even if the title insurance policy was incorrect, Walton has not established manifest injustice. As discussed in Walton I, there are other bases for concluding she had notice that the Claybridge DCRs governed her property. We concluded:

> Finally, we note that from our review of the record, and most importantly, the Section Six plat, it is apparent that the entryway easements were intended to serve as the entryways for Section Seven, and therefore, clearly the Claybridge Homeowners Association is the appropriate party to bear the responsibility for maintaining those easements. We further note that the entryway wall, fence, and landscaping were present on Lot 107 when Walton purchased it in 2000. Under these facts and circumstances, we conclude that Walton had more than adequate notice of all of the land use restrictions at issue and that the Claybridge DCR's provision subjecting Lot 107 to its terms is valid and enforceable.

Walton I, slip op. at 12 (footnote omitted). Any error in the title insurance policy or the trial court's prior reference to the title insurance policy does not result in a manifest injustice as to Walton's notice regarding the applicability of the Claybridge DCRs. The trial court properly concluded that the Claybridge DCRs were controlling based on our conclusion in Walton I.

Walton goes on to argue that the planting easement described in the Springmill plat does not permit the Association to landscape the easement and that the maintenance easement of the Springmill plat does not permit the Association to temporarily install Christmas lights. However, these arguments are based on the assumption that the Springmill DCRs control Lot 107. As we have previously held and continue to hold today, however, the Claybridge DCRs are controlling. We will not further address these arguments.

Walton has not established that the Association committed criminal trespass in its landscaping or installation of Christmas lights. The trial court properly rejected Walton's criminal trespass counterclaim.[6]

Conclusion

The trial court properly denied Walton's counterclaims for libel and criminal trespass. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.

[6] Although referenced by the parties, the issue of attorney fees is not before us today.